

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">vs.</div> JOHN AGUINIGA, <div style="text-align: center;">Defendant.</div>)))))))))	CASE NO. 8:07CR164 TENTATIVE FINDINGS
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The Court has received the Presentence Investigation Report (“PSR”) in this case. The Government has adopted the PSR’s findings and states that it will stand by the parties’ plea agreement. (Filing No. 39). The Defendant objects to the PSR to the extent that it rejects, as explained in PSR paragraph 66, that portion of the plea agreement wherein the parties agree that the Defendant should receive a reduction for his minor role in the offense. (Filing No. 38). See Order on Sentencing Schedule, ¶ 6. The Court intends to uphold the parties’ plea agreement, including the reduction for the Defendant’s minor role in the offense. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct except for paragraph 66 and its effect;

2. The Court’s tentative findings include that the Defendant’s offense level should be decreased by three levels due to his minimal participation in the offense, pursuant to U.S.S.G. § 3B1.2, which will reduce the Total Offense Level to 20, and given the Criminal History Category IV, will result in a guideline imprisonment range of 60 to 63 months, and a fine range \$7,500 to \$2,000,000;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 3rd day of January, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge